

Joseph Dawson, III
COUNTY ATTORNEY



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MEMORANDUM

ATTORNEY/CLIENT PRIVILEGE

TO: Members of Charleston County Council

FROM: Joseph Dawson, III, County Attorney 

RE: Lease for 3600 Rivers Avenue (Old Naval Hospital)

DATE: July 1, 2014

On May 20, 2014, Council authorized staff to negotiate and finalize a lease with Chicora Life Center, LC ("Chicora") for a term of 25 years to lease space in the former Naval Hospital for DAODAS and other County Departments. Based on discussions with the Chairman and County Administrator, my staff has reviewed and made extensive revisions to the lease proposed by Chicora Life Center, LC. The lease has been finalized; however, the Chairman wanted me to brief you on several key points in the lease that you need to be aware of before he signs the lease.

By way of background, the Naval Hospital was built in 1973, and contains approximately 400,000 square feet with approximately 365,717 square feet of rentable space. The building needs to be reconditioned before it can be reoccupied. The County's lease represents approximately 26.8% of the rentable square feet of the building (98,087sq. ft.). The lease is triple net with a base rent of \$12 per sq. ft. (with annual CPI adjustments) and the operating expenses at \$6.50 per sq. ft. for the first year only. Thereafter, the County will be responsible for paying 26.8% of the operating expenses for the property. According to the staff, the operating expenses are expected to exceed \$6.50 per sq. ft. after year one. The County's financial obligation for the first year of the lease is \$1,814,609.50 (\$1,177,044 base rent plus \$637,565.50 operating expenses). In addition, the Landlord will provide up to \$1,600,000 in improvements to the County's space in the building. This cost is amortized over the first 5 to 7 years of the base rent.

The City of North Charleston purchased the property at a U.S. General Services Administration auction for approximately \$2 million. The City sold the property to Chicora Life Center, LC pursuant to a limited warranty deed on January 16, 2014, for approximately \$5 million (cash and incentives). Chicora paid the City a \$3 million non-refundable deposit with the balance due on or before September 30, 2014. If the balance is not paid, the property will revert to the City.

Chicora Life Center, LC is a new South Carolina limited liability company. It was incorporated on January 17, 2014, by filing Articles of Organization with the S.C. Secretary of State. The company's principals are Doug Durbano an attorney/developer from Utah and Donald Trump, Jr. In addition, Chicora Life Center, LC has engaged Titan Atlas Global, L.C. to recondition the building. Titan Atlas Global, L.C. is a Utah company formed on July 19, 2013, by Doug Durbano, its principal. The company is managed locally by Jeremy Blackburn.

Although the lease provides a termination for default provision if Chicora defaults on any of its obligations, my understanding from county staff is that terminating the lease is not a practical option once we move in. Based on that assumption, Council needs to be mindful of the stability and viability of Chicora Life Center, LC regarding its ability to carry the costs of a building this size during high vacancies. To that end, the lease contains certain additional protections that are not traditional lease provisions (e.g, an irrevocable letter of credit and equipment warranties). In particular, the lease includes the following points and terms:

1. Although the lease is dated June 1, 2014, its effective date is contingent upon the occurrence of certain events:
 - a. Chicora must satisfy the reverter provision in its contract of sale with the City of North Charleston on September 30, 2014;
 - b. The City of North Charleston must issue a certificate of occupancy;
 - c. All licensing agencies for the County programs operating out of the building must be issued licenses to operate;
 - d. Chicora must complete the improvements to the County's leased space in accordance with the County's specifications; and
 - e. Chicora must provide the County with an Irrevocable Letter of Credit in the amount of \$1.3 million dollars annually for the first five years of the Lease as surety for all of its financial obligations under the lease.
2. It is atypical for a landlord to provide a surety (irrevocable letter of credit) for its performance. However, Chicora is a new company with the building as its primary asset, which is subject to a mortgage. The members of the company are shielded from personal liability. The County is exposed to financial risk because it is moving from property it owns, and it cannot return to it if Chicora fails. It will have to seek other suitable property to deliver the services contemplated in this lease. Moreover, since the County will not likely terminate the lease if Chicora defaults, the County needs to be able to recover any money it spends to cover Chicora's financial obligations pending resolution of the same.

3. In the Event of a Default by Chicora, the County is entitled to moving and relocation expenses in addition to actual damages. The original lease did not contain a mutual Default provision.
4. The County is not responsible for reconditioning and/or repair to any of the major systems (i.e., mechanical, electrical, plumbing, or HVAC) for the building. In addition, Chicora is required to provide warranties on the major systems and an equipment break down insurance policy at no cost to the County.
5. Chicora has a provision in the lease that states if the County does not occupy the premises excepting Chicora's failure to complete the improvements for the County, Chicora may recover the actual costs in making the improvements. However, the County will be entitled to a full refund of the actual costs it paid if Chicora leases greater than 65% of the County's portion of the building to a third party tenant within one year of the completion of the improvements.

The Parties have left open the issue of who pays for any cost in excess of \$1.6 million if the County improvements exceed the funding cap agreed to by the Parties. The lease states that Chicora must complete the improvements in accordance with the County's specifications and to the County's reasonable satisfaction. However, the County's tenant improvements specifications have not been completed; and therefore, they have not been approved. Chicora has limited the amount of funding it will provide for the work. As indicated above, the lease is contingent on improvements being completed; and therefore, this issue could create a stalemate if the improvements exceed the funding cap for the work when it is approved.

While the lease provides protections to the County, in particular the delayed effective date, it is imperative that the staff closely scrutinize all contingencies before they accept and/or approve any of the lease requirements. Also, I recommend that no changes or amendments be made to the lease without notice and/or approval of Council.

On a final note, on May 20, 2014, County Council authorized the sale of the Banov/Charleston Center to the Medical University of South Carolina with the understanding that the proceeds from the sale shall be used to pay the cost of leasing facility space for DAODAS and other County departments. The lease with Chicora contains a Termination for Non-Appropriation provision; however, the Termination for Non-Appropriation may be ineffective unless you amend your May 20, 2014, action earmarking the proceeds from the sale to pay the lease.

The lease, along with the exhibits, is a 30 page document. I have attempted to summarize the document, but if you have any questions or you would like more details, please contact me and I will provide you with more information.

cc: W. Kurt Taylor, Administrator

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